



DEPARTMENT OF AGRICULTURE

Office of the Chief Financial Officer

[Docket No. USDA-2023-0002]

Agency Information Collection Activities; Comment Request; Build America, Buy America (BABA) Waiver Data Collection

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, United States Department of Agriculture (USDA) is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new collection entitled “Build America, Buy America (BABA) Waiver Request Data Collection.” This will be a common form for other Federal Agencies to adopt. Additionally, USDA is requesting public comments on the proposed information collection.

DATES: USDA is requesting emergency processing and OMB approval for this information collection by January 31, 2023; and therefore, USDA is requesting public comments on the BABA Waiver Data Collection by January 31, 2023. A regular clearance process is also hereby being initiated to provide the public with the opportunity to comment under the full comment period. Interested persons are invited to submit comments on or before [insert 60 days after publication in the Federal Register]. Comments on this notice must be received by [insert 60 days after publication in the Federal Register] to be assured of consideration.

ADDRESSES: Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number USDA-2023-0002. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at

<http://www.regulations.gov> by selecting the Docket ID number. This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Follow the on-line instructions at that site for submitting comments.

- *Postal Mail/Commercial Delivery:* Written requests for information or comments submitted by postal mail or delivery should be addressed to Tyson P. Whitney, Director, Transparency and Accountability Reporting Division, Office of the Chief Financial Officer, Room 3027-S, Mail Stop 9011, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, DC 20250; Tyson.whitney@usda.gov.

FOR FURTHER INFORMATION CONTACT: Tyson P. Whitney, Director, Transparency and Accountability Reporting Division, Office of the Chief Financial Officer, Room 3021-A, Mail Stop 9011, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, DC 20250; 202-720-8978, Tyson.whitney@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Build America, Buy America (BABA) Waiver Request Data Collection.

OMB Number: 0505-NEW.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Type of Respondents/Affected Public: State, local and Indian tribal governments, Institutions of Higher Education (IHE), and nonprofit organizations.

Total Estimated Number of Annual Responses: 1.

Total Estimated Number of Annual Burden Hours: 10.

The number of responses and the burden associated with this information collection may differ from one Federal Agency to another. The estimated number of annual responses is one response per applicant per project, program, or agency (as applicable). When a Federal Agency adopts the common form, they would provide their estimates for the number of annual responses

and burden hours to complete the form. The number of respondents is not known at this time. Initial estimate for burden hours per response is 10 hours and is based on the Department of Education's estimate; most of this time would be used to conduct the research needed to complete the form.

Abstract: In accordance with section 70914 of the Build America, Buy America Act (Pub. L. 117-58 sections 70901 – 70952) (BABAA), recipients and subrecipients funded under USDA's Federal financial assistance programs that allow funds to be used for infrastructure projects, *i.e.*, construction and broadband infrastructure, may not use their funds for these infrastructure projects unless they comply with the following BABAA sourcing requirements: (1) All iron and steel used in the project are produced in the United States; (2) All manufactured products used in the project are produced in the United States; and (3) All construction materials are manufactured in the United States.

USDA may, in accordance with sections 70914(b) and (d), 70921(b), and 70935 of BABAA, and the OMB Memorandum M-22-11, *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, approve waivers to BABAA domestic sourcing requirements submitted by recipients and subrecipients under a Federal financial assistance program when an award may be used for an infrastructure project, regardless of whether infrastructure is the primary purpose of the award. USDA may approve, subject to notice and comment requirements, and the OMB Made in America Office (MIAO) review, the types of waivers listed below when the following conditions are met: (1) Public Interest Waiver – Applying the BABAA domestic content procurement preference would be inconsistent with the public interest, (2) Nonavailability Waiver – The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient reasonably available quantities or of a satisfactory quality, and (3) Unreasonable Cost Waiver – The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than

25 percent.

This is a new information collection, and it includes the form entitled “Build America, Buy America (BABA) Waiver Request Data Collection.”

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice provides the general public and Federal agencies with an opportunity to comment on the new information collection. This will help USDA assess the impact of its information collection requirements and minimize the public’s reporting burden.

USDA is soliciting comments on the proposed information collection described below. This will be a common form available for other Federal Agencies to adopt. The use of a common form will allow for greater standardization of information collection. USDA is especially interested in public comment addressing the following issues: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Additional Information: Pursuant to the OMB procedures established at 5 CFR part 1320, USDA requests that the following information collection, Build America, Buy America (BABA) Waiver Request Data Collection, be processed in accordance with section 1320.13 Emergency Processing. This information collection is essential to USDA’s ability to effectively approve waiver requests for USDA recipients and subrecipients as required in accordance with

section 70914 of BABAA and OMB Memorandum M-22-11. This information collection will keep projects moving and prevent immediate delays to critically important infrastructure projects.

Tyson P. Whitney,

Director,

Transparency and Accountability Reporting Division,

Office of the Chief Financial Officer,

U.S. Department of Agriculture.

[FR Doc. 2023-01951 Filed: 1/30/2023 8:45 am; Publication Date: 1/31/2023]